

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

JOSE SIERRA,

**ANSWER**

Plaintiff,

-against-

**08 CV 0507 (LBS)**

THE CITY OF NEW YORK AND POLICE OFFICER JOHN  
DOES 1-7

Defendants.

----- X Jury Trial Demanded

Defendant City of New York, by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to the complaint, respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the complaint, except admits that plaintiff purports to bring this action as stated therein.
2. Denies the allegations set forth in paragraph "2" of the complaint, except admits that plaintiff purports to invoke the Court's jurisdiction as stated therein.
3. Denies the allegations set forth in paragraph "3" of the complaint, except admits that plaintiff purports to invoke the Court's jurisdiction as stated therein.
4. Denies the allegations set forth in paragraph "4" of the complaint, except admits that plaintiff purports to base venue as stated therein.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "5" of the complaint.

6. Denies the allegations set forth in paragraph “6” of the complaint, except admits that defendant City of New York is a municipal corporation.
7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the complaint.
8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the complaint.
9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “9” of the complaint.
10. Denies the allegations set forth in paragraph “10” of the complaint.
11. Denies the allegations set forth in paragraph “11” of the complaint.
12. Denies the allegations set forth in paragraph “12” of the complaint.
13. Denies the allegations set forth in paragraph “13” of the complaint, except admits that plaintiff was taken to the 77<sup>th</sup> Precinct.
14. Denies the allegations set forth in paragraph “14” of the complaint.
15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the complaint.
16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the complaint.
17. Denies the allegations set forth in paragraph “17” of the complaint.
18. In response to the allegations set forth in paragraph “18” of the complaint, defendant repeats and realleges the responses set forth in paragraphs 1 through 17 inclusive of this answer, as if fully set forth herein.
19. Denies the allegations set forth in paragraph “19” of the complaint.

20. In response to the allegations set forth in paragraph "20" of the complaint, defendant repeats and realleges the responses set forth in paragraphs 1 through 19 inclusive of this answer, as if fully set forth herein.
21. Denies the allegations set forth in paragraph "21" of the complaint.
22. In response to the allegations set forth in paragraph "22" of the complaint, defendant repeats and realleges the responses set forth in paragraphs 1 through 21 inclusive of this answer, as if fully set forth herein.
23. Denies the allegations set forth in paragraph "23" of the complaint.
24. Denies the allegations set forth in paragraph "24" of the complaint.
25. Denies the allegations set forth in paragraph "25" of the complaint.
26. In response to the allegations set forth in paragraph "26" of the complaint, defendant repeats and realleges the responses set forth in paragraphs 1 through 25 inclusive of this answer, as if fully set forth herein.
27. Paragraph "27" of the complaint sets forth conclusions of law rather than averments of fact, accordingly no response is required.
28. Paragraph "28" of the complaint sets forth conclusions of law rather than averments of fact, accordingly no response is required.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

29. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

30. Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

31. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of the defendant.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

32. At all times relevant to the acts alleged in the complaint, the duties and functions of the City's officials entailed the reasonable exercise of their proper and lawful discretion. Therefore, defendant has governmental immunity from liability.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

33. Punitive damages cannot be awarded against the City of New York.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

34. The actions of any police officers involved were justified by probable cause.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

35. Plaintiff failed to comply with New York General Municipal Law §§ 50(e), 50(h) and 50(i).

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

36. Plaintiff did not satisfy all the conditions precedent to suit.

**AS AND FOR AN NINTH AFFIRMATIVE DEFENSE**

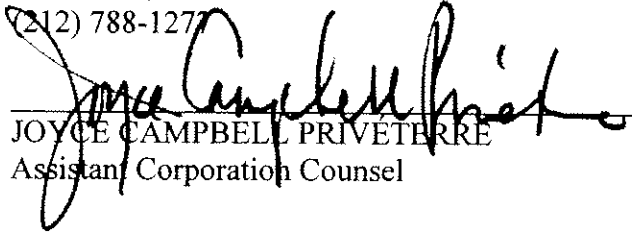
37. There was probable cause for plaintiff's arrest, detention and prosecution.

**WHEREFORE**, defendant City of New York requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
April 12, 2008

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
*Attorney for Defendant City of New York*  
100 Church Street, Rm. 3-148  
New York, New York 10007  
(212) 788-1277

By:

  
JOYCE CAMPBELL PRIVETERRE  
Assistant Corporation Counsel

TO: Izabel Olszowa Garcia, Esq.  
Attorney for Plaintiff  
26 Court Street, Suite 1815  
Brooklyn, New York 11242  
Tel: (646) 239-4330

